



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/930,966

08/17/2001

Brian W. Adkins

114300.2200

1822

30734

7590

01/13/2003

BAKER + HOSTETLER LLP  
WASHINGTON SQUARE, SUITE 1100  
1050 CONNECTICUT AVE. N.W.  
WASHINGTON, DC 20036-5304

EXAMINER

JACKSON, ANDRE K

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/930,966

Applicant(s)

ADKINS ET AL.

Examiner

Andre' K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-9, 12-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 12-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-9, 12-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted Prior Art (Figure 1) in view of Howard.

Regarding claim 2, the admitted Prior Art discloses a liquid level gauge that is mounted on the front face of the incubator.

Regarding claim 3, neither the admitted Prior Art nor Howard discloses a scale disposed on the front face of the incubator. However, to orient the scale on a front face of the incubator in combination of Howard and the admitted Prior Art would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 4, the admitted Prior Art (Figure 1) discloses a water jacket incubator (5) that is substantially rectangular with a front door coincident with a plane, which includes a front face of the incubator and a

liquid level gauge (11), which includes an alarm and an indicator light. Howard also discloses an incubator that has a liquid level gauge (9), which is basically a sight glass level gauge. Howard shows that it is well within the purview of the skilled artisan and known within the art to include a level gauge that is of the sight glass variety to an incubator. Therefore, it would have been obvious to the skilled artisan to provide a liquid level gauge that is of a sight glass nature as taught by Howard since the level gauge can still function if there is a sudden loss in power. A scale disposed on the liquid level gauge is not disclosed. However, one of ordinary skill in the art would have been inclined to place a scale onto the gauge to have an accurate measurement of liquid present in the incubator. Most sight gauges have a scale or some sort of readable markings placed on the gauge to show the exact level readings.

Regarding claim 5, the admitted Prior Art does not disclose a liquid level gauge that is tubular. Howard discloses an incubator that has a liquid level gauge (9) that is tubular (Figure 1). Therefore, it would have been obvious to the skilled artisan to provide a liquid level gauge that is tubular as taught by Howard since a tubular liquid level gauge the liquid level can be read from different positions around the incubator.

Regarding claim 6, the admitted Prior Art (Figure 1) discloses an incubator that does have a liquid level gauge connected to the water jacket.

Regarding claim 7, neither the admitted Prior Art nor Howard disclose an incubator that provides a scale with full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge of Howard to determine the precise amount of liquid remaining within the water jacket. Most sight gauges have a scale or some sort of readable markings placed on the gauge to show the exact level readings.

Regarding claim 8, the admitted Prior Art discloses an incubator that does have a liquid level gauge that is visible when the incubator is closed.

Regarding claim 9, the orientation of the feed tube is considered to be an obvious design choice within the purview of one of ordinary skill in the art. Note Prior Art Figure 2 shows a feed tube (21) disposed in the water jacket.

Regarding claim 12, the admitted Prior Art does not disclose an incubator that has a monitoring means that is mechanical. However, Howard discloses an incubator that has a monitoring means that is mechanical (9). Therefore, it would have been obvious to the skilled artisan to modify the admitted Prior Art to include an incubator that has a monitoring means that is mechanical as taught by Howard since having a mechanical monitoring means makes it possible to determine the liquid level should the incubator lose power.

Regarding claim 13, the admitted Prior Art discloses an incubator, which has a means for measuring a liquid level of the incubator (11).

Regarding claim 14, the admitted Prior Art discloses a means for monitoring a level of fluid (11), a means for mounting the fluid level monitoring device flush into a front face of an incubator and an incubator that is a water jacket incubator (5). What is not disclosed is a means for adjusting fluid level. However, Howard discloses a means for adjusting fluid level (10). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the admitted Prior Art to include a means for adjusting fluid level as taught by Howard since it is necessary for the skilled artisan to be able to control the fluid level within the water jacket.

Regarding claim 15, neither the admitted Prior Art nor Howard disclose a scale mounted flush with the front face of the incubator. However, to orient the scale flush with the front face of the incubator in combination of Howard and the admitted Prior Art would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 16, the admitted Prior Art (Figure 1) discloses an incubator that does have a fill hole (15) and a drain lock (13).

Regarding claim 17, the admitted Prior Art discloses an incubator that has a visible sight window on the front face (Figure 1).

Regarding claim 18, the admitted Prior Art discloses a minimum level indicator (11). Neither the admitted Prior Art nor Howard discloses an incubator that has a monitoring means that includes a maximum liquid level indicator. However, one of ordinary skill in the art would have been inclined to place maximum liquid level indicator to determine how much liquid has been placed in the water jacket so there will not be an over fill situation.

Regarding claim 20, the admitted Prior Art (Figure 1) discloses a water jacket incubator and visibly measuring a minimum liquid level of the incubator (11). What is not disclosed by the admitted Prior Art is a mechanical fluid level indicator that visibly measures a maximum liquid level of the incubator and adjusting the level in the incubator. Howard discloses an incubator that has a mechanical fluid level indicator (9, sight glass) that is visibly monitored by visibly measuring a maximum liquid level of the incubator and adjusting the level in the incubator (Figure 1). Therefore, it would have been obvious to the skilled artisan to modify the admitted Prior Art to include a mechanical fluid level indicator that is visibly monitored by visibly measuring a maximum liquid level of the incubator and adjusting the level in the incubator as taught by Howard since the operator would not want to over-fill the incubator with liquid. In the

Howard reference a low liquid level and a maximum liquid level can be seen by simply observing the position of the liquid within the sight glass.

Regarding claim 21, neither the admitted Prior Art nor Howard discloses a scale disposed on the front face of the incubator. However, to orient the scale on a front face of the incubator in combination of Howard and the admitted Prior Art would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 22, neither the admitted Prior Art nor Howard discloses an incubator that does not provide a scale full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge to determine the precise amount of liquid remaining within the water jacket.

### ***Response to Arguments***

3. Applicant's arguments with respect to claim 4 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's arguments filed 12/23/02 have been fully considered but they are not persuasive.

Regarding claim 14, Applicants argue that control panel (11) is not a liquid level gauge or a measurement device, which is in contrast to what



is stated in the specification. In the Applicants' specification on page 4, lines 16-18, it is stated that the standard means for measuring water level in an incubator is done by using the grounding loop stated in the Applicants' arguments on page 4, lines 4 and 5. Furthermore, the claim does not recite a "gauge" that is "mechanical" only a means for monitoring a level of fluid, which control panel (11) monitors the liquid level and alerts the operator with an audible alarm or an illuminating lamp. Howard and the Prior Art both disclose a means for monitoring water level (9) and (11) respectively.

Regarding claim 20, Applicants argue that the Prior Art does not disclose visibly monitoring the liquid level and that a minimum liquid level is not taught by the Prior Art. In the Applicants' specification it is stated that the control panel (11) illuminates a lamp to indicate to the operator that there is insufficient water level in the incubator. Which is visibly (lamp) monitoring a low (insufficient) water level. Even more, the Applicants state on page 5, lines 6-10, that if this grounding loop "sensor", which is connected to the control panel (11), becomes corroded the sensor would not be able to indicate a "low water condition" which is in contrast to the Applicants' arguments on pages 5 and 6, lines 22-23 and 1-3, that the Prior Art does not teach a "minimum (low) liquid level". The Examiner has included a definition of "minimum" which was used as a reference in making the rejection. Furthermore, the claim does not recite


a "gauge" that is "mechanical" only visibly monitoring a liquid level.

Howard and the Prior Art both disclose this means for visibly monitoring.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Fri. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are N/A for regular communications and N/A for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

A.J.   
January 6, 2003

  
DANIEL S. LARKIN  
PRIMARY EXAMINER